

INSTRUCTIONS FOR FILING A MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE UNDER 28 U.S.C. §2255

- These instructions are meant only to help you understand the forms and to explain some of the Court's procedures.
- The Court cannot give you legal advice or provide you with copies of cases or other legal materials.
- This packet contains two copies of a Motion to Vacate Form. You only have to file one copy with the Clerk. The extra copy is provided so that you may use it to make a copy of what you are filing.
- The Court does not have to provide copies to you and anything you file with the Court becomes a part of the official Court record.
- There is no fee for filing a motion to vacate under § 2255.
- **IS THIS FORM FOR YOU?**
 - **USE THIS FORM IF:**
 - You are currently in custody or will be in custody because of a FEDERAL COURT judgment;
 - You want to allege:
 - you are in custody in violation of the Constitution, laws, or treaties of the United States;
 - your sentence exceeds the maximum permitted by law;
 - the court did not have jurisdiction to impose judgment; or
 - your trial counsel was ineffective.
 - You have NOT filed a motion to vacate concerning the same federal judgment before.
 - **YOU MAY FILE ONLY ONE Motion to vacate PER JUDGMENT.**
 - If you have already filed a motion to vacate under 28 U.S.C. §2255 challenging the same judgment and it was denied, you must file a motion with the United States Court of Appeals for the Fourth Circuit asking it to authorize this Court to consider a second or successive motion.
 - Unless the Fourth Circuit Court of Appeals authorizes this Court to consider your successive motion, this Court will not have jurisdiction to consider your motion.

Filing the Motion

- You may either type your motion OR hand write it so long as it is easily read. Documents filed with the Court that cannot be read do not have to be accepted for filing.
- If you need more space to provide any of the information requested, attach additional sheets of paper and indicate that you have done so on the form.
- Keep in mind that this is a motion filed in connection with your federal criminal case; therefore, it should be filed in the court where you were convicted.
- The Case Number is your federal criminal case number. A civil case number will be assigned later by the Clerk. This is a little confusing and may lead to people failing to put their criminal case number on the motion. Everything you receive from the Court after your motion is filed will have both numbers on it; include both numbers on anything else you file.
- Answer the questions on the form carefully and provide as much information as you can.
- INCLUDE ALL the claims you wish to raise.
 - List each ground on which you are seeking relief
 - State the **facts** from your case that support each ground
 - It is not necessary to provide legal citations.
 - If you want to provide legal arguments, you may file a separate Memorandum of Law.
- In the last section you should state what you want the Court to do in the event judgment is entered in your favor.
- You **must** sign the motion UNDER OATH.
- Mail your completed motion to the federal court in Maryland where your trial was held, either:

The Clerk of the Court
U.S. District Court-Maryland
Northern Division
101 W. Lombard Street
Baltimore, Maryland 21201

OR

The Clerk of the Court
U.S. District Court-Maryland
Southern Division
6500 Cherrywood Lane
Greenbelt, Maryland 20770

- If the judge who presided over your criminal trial is no longer available, another judge may be assigned to review your motion to vacate.

- The Court may order the government to respond to your motion. If so, you may file a Reply. You will have thirty (30) days from the date the government answers to do so unless the Court specifies some other filing deadline.

Representing Yourself
For a Motion to Vacate under 28 U.S.C. §2255

- Your motion will be reviewed by the Court to make certain it is filled out properly. If additional information is needed, you will be notified what to file and when to file it. If you need additional time, ask for it with a motion for extension of time. Do not allow the time to expire or your motion to vacate may be denied or dismissed.
- Everything you file in your case should be addressed to the appropriate Clerk's Office:

The Clerk of the Court U.S. District Court-Maryland Northern Division 101 W. Lombard Street Baltimore, Maryland 21201	OR	The Clerk of the Court U.S. District Court-Maryland Southern Division 6500 Cherrywood Lane Greenbelt, Maryland 20770
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- You **MUST** notify the Court in writing of any change in your address while your case is pending. Failing to do so may result in denial of your motion.
- **DO NOT** try to communicate directly with the judge assigned to your case.
- If you want to request that something be done in your case you must file a motion or other document with the Clerk.
- Exhibits or other documents already filed by the other party do not need to be filed again; rather, you simply refer to the document.
- You must sign all of the documents you file.
- Unless otherwise directed by the Court, you do not need to send a copy of everything you file in your case to counsel for Respondent, because the attorney can view your original submissions electronically from the docket.

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, _____, a copy of this
(title of the document) _____, was mailed, postage prepaid,
to (name and address of the attorney or person to whom you sent it).

(your signature _____)

It is not necessary to state in the certificate of service that copies were sent to the Court or to the Clerk.

Do not file any motions or memoranda that are longer than fifty pages unless you have received permission from the Court. Most motions and memoranda should be much shorter than fifty pages.

You do not have to file copies of exhibits that are already on file in the same case. For example, if the government files a response to your motion and attaches as an exhibit a copy of a plea agreement, you do not have to attach a copy of that document to any motions or memoranda you file. You may simply refer to the copy that is already in the file.

You must sign every pleading, motion, and memorandum that you file. You MAY NOT sign someone else's name, nor may you file anything on behalf of someone else.

FORM TO BE USED BY A PERSON FILING A MOTION TO VACATE,
SET ASIDE, OR CORRECT A SENTENCE UNDER 28 U.S.C. § 2255

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

(Full name, date of birth, identification
number and address of movant)

v.

Criminal Case No.: _____

Civil Action No.: _____

(Leave blank. To be filled in by Court.)

UNITED STATES OF AMERICA

MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE

1. Name and location of the court which entered the judgment/conviction being challenged.

2. Date of judgment or sentencing.

3. Length of sentence.

4. Nature of offense (all counts).

5. What was your plea? (check one)

- (a) Not Guilty ☐
(b) Guilty ☐
(c) Nolo Contendere ☐

If you entered different pleas to different counts or charges, explain.

6. Kind of trial. (check one)

- (a) Jury ☐
(b) Judge Only ☐

7. Did you testify at the trial?

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☐

If you answered yes, provide the following information:

A. What grounds did you raise?

B. What was the result?

C. What was the date of the decision by the Court of Appeals?

9. Did you file a petition for writ of certiorari to the United States Supreme Court?

Yes ☐ No ☐

If you answered yes, what was the result?

If you answered yes, what was the date of the decision by the Supreme Court?

10. Other than a direct appeal, have you filed any petitions, applications, or motions challenging this judgment in any federal court?

Yes ☐ No ☐

11. If you answered yes, provide the following information for **each** petition, application, or motion:

A. Name and location of the court where you filed.

B. Describe what you filed and the date on which it was filed.

C. What grounds did you raise?

D. What was the result?

E. What was the date of the decision?

F. Did you appeal the decision?

Yes ☐ No ☐

G. What was the result?

H. If you did not appeal any adverse decision, explain why you did not appeal.

12. Do you CURRENTLY HAVE PENDING in any court any motion, petition, or appeal concerning the judgment being challenged in this petition?

Yes ☐ No ☐

If you answered yes, describe what you filed, when, where, and its current status.

13. In most cases federal law requires that a motion to vacate or set aside judgment be filed within one (1) year of the date your conviction became final. 28 U.S.C. § 2255. If this motion is being filed more than one year after your conviction became final, explain why it is late and/or why you believe the one year limitations period does not apply.

14. State BRIEFLY every ground on which you claim you are being held unlawfully. BRIEFLY summarize the facts supporting each ground. If necessary, you may attach additional pages.

A. Ground One: _____

Supporting Facts: _____

B. Ground Two: _____

Supporting Facts: _____

C. Ground Three: _____

Supporting Facts: _____

D. Ground Four: _____

Supporting Facts: _____

15. If any of the issues that you are raising in this motion have not been previously presented, explain which issues are being raised for the first time and why.

16. Do you have any other sentence(s) to be served after you complete the sentence(s)/commitment that is being challenged in this petition?

Yes ☐ No ☐

If you answered yes, provide the following information about each of your future sentences:

A. Name and location of the court that imposed the sentence.

B. Length of the sentence. _____

C. Have you filed, or do you intend to file, a petition or motion attacking this sentence?

Yes ☐ No ☐

WHEREFORE, Movant prays that the Court grant him/her all relief to which he/she may be entitled in this action.

I DECLARE UNDER THE PENALTIES OF PERJURY THAT THE INFORMATION ABOVE IS TRUE AND CORRECT.

SIGNED THIS _____ day of _____, _____.

(original signature of movant)

(address of movant)